

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/11/2004

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA

AND

THE HONOURABLE MR.JUSTICE D.MURUGESAN

W.P.No.41400 of 2002

A.S.Santhalatha .. Petitioner

-Vs-

1. The District Collector
Tiruvarur District, Tiruvarur

2. The Chief Educational Officer
Tiruvarur District

3. The Director of Elementary Education
College Road, Chennai-6

4. The Registrar
Tamil Nadu Administrative Tribunal
Chennai-104 .. Respondents

Writ Petition filed under Article 226 of The Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent issued in Na.Ka.No.5625/2000 /Aa3 dated 28.4.2001 cancelling the Residence Certificiate and the consequential order of the fourth respondent passed in O.A.No.4046 of 2 001 dated 30.4.2002 confirming the order of the 1st respondent, quash the same and consequently direct the respondents 2 and 3 to appoint the petitioner as Secondary Grade Teacher based on her employment Registration Seniority pursuant to the counselling conducted on 29.11.20 00 with all service and monetary benefit from November, 2000.

!For Petitioner :: Mr.N.Paulvasanthakumar

^For Respondents :: Ms.G.Kavitha
Govt.Advocate for R1 to R3
R4 - Tribunal

:ORDER

(Order of the Court was delivered by D.MURUGESAN, J.)

For the disposal of this writ petition, the following factual aspects are necessarily to be stated. The petitioner is a native of Kanyakumari District. After completing Plus Two and Teacher Training courses, she registered her name in the employment exchange in that District. She got married to Mr. Albert Daniel on 26.5.97. Her husband secured employment in the Government High School, Tiruvarur District on 1.12.97. There is no dispute that the husband of the petitioner is working in the said District even as on today. On 3.2.99, the petitioner sought for appointment to the post of Teacher in Christ the King English Medium School, Inangudi Post, Nannilam Taluk. In fact she was appointed as a School Assistant during October, 1999 in the said school. Her child, aged about 4 years, is also studying U.K.G. in Vallalar Gurukulam Matriculation School, Nannilam. For the purpose of transfer of registration from Kanyakumari District employment exchange to Tiruvarur District employment exchange, the petitioner should produce a Residence Certificate from the Tahsildar having jurisdiction over the place where the petitioner resides. Such a certificate is a pre-requirement for transfer of the registration from one employment exchange to another employment exchange as per the guidelines framed in Circular No.22 of 1997. Pursuant to the request, the petitioner was issued with a Residence Certificate by the Tahsildar, Nannilam on 14.6.99 certifying that the petitioner has been residing for the last one year at Door No.13, Pidari Koil Street, Sannanallur, Nannilam Taluk, Tiruvarur District. On the strength of the said certificate, her registration in the employment exchange was transferred from Kanyakumari District to Tiruvarur District on 27.7.99. Pursuant to the said transfer of registration, the petitioner was issued with an interview card for the post of Secondary Grade Teacher on 29.11.2000. Before the petitioner could be considered for appointment, the certificate issued by the Tahsildar, Nannilam dated 14.6.99 was cancelled by the District Collector on 22.12.2000. Questioning the said order, the petitioner had earlier filed W.P.No.183 of 2001, which was ordered on 14.3.2001 by directing the District Collector to consider the matter afresh for grant of Residence Certificate, more particularly, with reference to the Circular No.22 of 1997. After hearing the petitioner, the first respondent District Collector, by the impugned order dated 28.4.2001, again cancelled the Residence Certificate issued by the Tahsildar on 14.6.99. The petitioner thereafter questioned the said order before the Tamil Nadu Administrative Tribunal, but was unsuccessful. Hence, the present writ petition.

2. We have heard Mr.N.Paulvasanthakumar, learned counsel for the petitioner and Ms.G.Kavitha, learned Government Advocate for the respondents.

3. According to the learned counsel for petitioner, inasmuch as the petitioner had produced documents to sustain her proof of residence within the jurisdiction of Tahsildar, Nannilam Taluk, her right to the Residence Certificate cannot be deprived by the District Collector. For the reasons namely, that the petitioner did not take steps to cancel her name from the ration card at Kanyakumari District and that having married in the year 1997 and her husband has been in employment in Tiruvarur District from December, 1997, the petitioner did not take any steps to get the Residence Certificate in Nannilam Taluk, she was denied registration of her name in Tiruvarur District. The reasons adduced are extraneous to the issue, as the relevant

consideration should be only in respect of the fact as to whether the petitioner is a resident of the place within the jurisdiction of Nannilam Taluk and whether the petitioner would be entitled to register herself in the employment exchange on the strength of the Residence Certificate, more particularly, in the face of the Circular No.22 of 1997.

4. It is the stand of the respondents that the petitioner did not satisfy as to her residence for a period of ten years at Nannilam Taluk, and therefore she is not entitled to the Residence Certificate. In the Government letter dated 16.6.84, the Government had directed that whenever the Nativity Certificates are issued, it should be ensured the applicant's continuous stay in the State supported by documents. The Residence Certificate issued to the petitioner has been cancelled by the District Collector only on the basis of the said letter of the Government, as the petitioner did not reside for a period of ten years and did not produce any document to sustain the said claim.

5. We have given our anxious consideration to the above submissions. At the outset we would like to consider the Government letter dated 16.6.84 as well the Circular No.22 of 1997. Insofar as the Government letter dated 16.6.84, it was issued only to prevent the people of adjoining States of Karnataka, Kerala and Andhra Pradesh from getting admissions for their wards in the adjoining districts of Dharmapuri, Coimbatore, Salem and Kanyakumari. In such circumstances, the Government thought it fit to have a check on such migration carried on only for the purpose of securing admission to the educational institutions. The very Government letter itself is reproduced as under:-

Copy of Government Letter No.46738/W1/8-1 dated 16.6.84 for the Commissioner and Secretary to Government addressed to the District Collectors, Additional Collectors, District Revenue Divisional Officers.

Sub: District Revenue Administration - Issue of Nativity Certificates - Strict scrutiny and prompt issue - instructions issued.

Ref: 1. G.O.Ms.No.2906 Revenue dated 04.12.91.
2. G.O.Ms.No.9 Social Welfare dated 3.1.83
3. G.O.Ms.No.1888 Revenue dated 10.11.83.

It has been brought to the notice of the Government that there are instances of the people of the adjoining States of Karnataka, Kerala and Andhra Pradesh managing to get admission for their sons and daughters at the school final stage in the schools of the adjoining districts viz., Dharmapuri, Coimbatore, Salem and Kanyakumari of this state and then on the basis of their study in these schools obtain Nativity certificates on the presumption that such a candidate is a native of Tamil Nadu and on the basis of such documentary evidences get admission for their sons and daughters in the professional colleges such as Engineering, Medical, Dental, Agricultural Veterinary etc., in this stage. This sort of attitude deprives the

concessions available to the student of this stage. The Government therefore consider that this situation should be prevented in future.

2. The following points are also specifically brought to your notice.

a. Only those students who belong to this state are eligible for admission in the professional colleges.

b. There are already provisions for reservation of seats in the professional colleges and for students belonging to other states in a regional basis.

c. Complaints have been received that students who do not belong to this state but belonging to other states have obtained Nativity Certificates in this state. Concerned officials must exercise utmost caution and strict scrutiny while issuing Nativity Certificates so as not to give room for the complaints.

d. Whenever Nativity Certificates are issued it should be ensured that the applicant's continuous stay in the state for ten years should be authorised by documentary evidence.

e. Permanent residential addresses, occupations etc., of the parents of the applicant students should be verified.

f. If parents are Government servants, their place of employment, number of years they have been employed etc., should be verified and

g. Careful verification is required that wrong addresses have not been given for the purpose of obtaining Nativity Certificates. It must be verified that the student applicants have had their education continuously for not less than ten years in this state.

3. I am to request you kindly to bear in mind the points mentioned in the preceding paragraph and to issue strict suitable circular instructions to all concerned to exercise utmost caution while issuing nativity certificates.

Sd/-

For Commissioner and
Secretary to Government

A careful reading of the said Government letter reveals that it relates only to the issue of Nativity Certificate. Nativity Certificate is in respect of a permanent residence in a particular place and in that context the Government had prescribed a minimum period of ten years of residing/stay in a particular district for issuance of Nativity Certificate. Moreover, the said Government letter was issued only in order to prevent the people of the adjoining States to move into the border districts of this State and admit their children in the schools for the purpose of securing admission to professional courses.

6. On the other hand, the Circular No.22 of 1997 relates to the

issuance of Residence Certificate. The said circular does not stipulate any condition as to the period of residence in a particular place for a person to obtain such certificate. Moreover, the said circular refers to the right of a person moving from one district to another district for justifiable reasons to obtain such a certificate, more particularly, for the purpose of effecting change of registration in the employment exchange. In fact this guideline came up for consideration before this Court in W.P.No.183 of 2001 and the translated portion of the circular reads as under:-

"Those persons who seek change of their Employment Registration from one District to another must make their application along with the copy of certificate of residence issued by an officer not below the rank of Tahsildar of the district to which the change of registration is sought for. Such change of registration shall not be done in the event of non-production of the certificate of residence issued by the said authority. The above said certificate from the applicant, one to be retained in the office file of the Employment Exchange effecting transfer and the other to be forwarded to the Employment Exchange to which transfer is sought for. The copy of the said certificate of residence received by the Employment Exchange where the change of registration is sought for should be perused and should be placed in the concerned file. A detailed note in this regard should be mentioned in F.O.U. column."

After observing the purport of the circular, this Court had directed the District Collector to consider the case of the petitioner for issuance of Residence Certificate.

7. From the above, it is seen that a Certificate of Residence is with reference to the place where a person resides for justifiable reason and does not stipulate any condition for a minimum period of stay in a particular place. On the other hand, the Nativity Certificate refers to the person's birth or his residing in a particular place. In this context, the Concise Oxford Dictionary Tenth Edition defines "residence" as 1. the fact of residing somewhere. 2. the place where a person resides; a person's home. 3. the official house of a government minister or other official figure. The said dictionary defines "nativity" as 1. the occasion of a person's birth. 2. the birth of Jesus Christ.

8. From the above discussions, the following two further issues arise for consideration. By the impugned order, the first respondent has relied upon the Government letter which relates to the Nativity Certificate. This, in our view, cannot be accepted, as the petitioner has applied only for a Residence Certificate and not for a Nativity Certificate. Secondly, when this Court had already directed the District Collector to consider the request of the petitioner for issuance of Residence Certificate with reference to the Circular No.22 of 1997, placing reliance on the Government letter dated 16.6.84 by completely ignoring the Circular No.22 of 1997 cannot also be sustained.

9. On the above findings, the validity of the impugned order should be considered on merits. There is no dispute that the petitioner had married one Mr. Albert Daniel on 26.5.97, who admittedly secured employment in the Government High School in Nannilam Taluk, Tiruvarur District with effect from

1.12.97 and is continuing in the said post even now. The petitioner has also produced the material to show that she is also working as teacher in a private school in Nannilam Taluk with effect from 3.2.99. The District Collector has not discarded the above facts which were sought to be established by the petitioner by producing the relevant certificates, as could be seen from the very impugned order itself. The District Collector, though has referred to the above certificates in the impugned order, has not taken into consideration of the same only for the reason that on the date when the petitioner was issued with the Residence Certificate dated 14.6.99, she has not cancelled the employment registration card in the Kanyakumari District. This reason is obviously a total misconception. For effecting transfer of the registration in the employment exchange, Residence Certificate is a pre-requirement. Till such time such a certificate is obtained, a candidate is not entitled to seek for transfer of the registration. Such a Residence Certificate was issued to the petitioner only on 14.6.99 and till that date the petitioner cannot cancel the employment registration in the Kanyakumari District and seek for transfer of the same to Tiruvarur District. In fact the Residence Certificate was issued on 14.6.99 and without any further delay the petitioner immediately approached the officer concerned in the employment exchange for effecting transfer, which was ordered on 27.7.99.

10. In view of the above facts, we are unable to accept the reasons adduced by the District Collector for cancelling the certificate on the ground that on the date when the petitioner was issued with the Residence Certificate, she did not take steps to cancel the employment registration in Kanyakumari District. The other reason given by the District Collector is that in spite of the fact that the petitioner had married one Mr. Albert Daniel on 26.5.97 and that her husband secured employment during December, 1997 in Tiruvarur District, she could have taken steps to obtain the Residence Certificate in Tiruvarur District immediately thereafter. This reason is also unacceptable, as the petitioner secured employment as a teacher in private school only during the year 1999. Immediately after her securing employment during December, 1999, she has made a request to the Tahsildar, Nannilam Taluk for issuance of Residence Certificate. In the matter of consideration of issuance of Residence Certificate, the officer empowered should consider the fact as to whether actually the applicant has been residing in that place for which the applicant seeks for Residence Certificate. There is no dispute that the Tahsildar, Nannilam is the competent officer to consider such a request. On satisfying the fact that the petitioner has been factually residing in the Sannanallur Village within his jurisdiction in Nannilam Taluk, he has issued such a certificate. In the order of the District Collector, we do not find any reason to discard the satisfaction of the Tahsildar as to the residence of the petitioner, which was arrived on the basis of the actual fact. Except the above two reasons, which we have not agreed, the District Collector has not given any reason for disbelieving the documents and the materials produced by the petitioner to satisfy the Tahsildar for issuance of Residence Certificate. The Tribunal has also rejected the challenge of the petitioner to the order of cancellation of Residence Certificate only on the same grounds contained in the order of the District Collector.

11. For all the above reasons we find, on the facts of this case, that the petitioner has satisfied the competent authority namely, the

Tahsildar, Nannilam Taluk by sufficient materials for issuance of a Residence Certificate. Such a certificate issued by the competent authority has been cancelled for unacceptable reasons. In the circumstances, we are inclined to interfere with the order of the Tribunal dated 30.4.2002 as well the order of the District Collector dated 28.4.20 01 in cancelling the Residence Certificate issued by the Tahsildar, Nannilam on 14.6.99. Accordingly, the writ petition is allowed and the order of the District Collector dated 28.4.2001 as well the order of the Tribunal dated 30.4.2002 are set aside. The petitioner is entitled not only to effect transfer of her registration in the employment exchange, but also to the benefits accrued on such registration on the basis of the Residence Certificate issued by the Tahsildar dated 14.6.99. It is submitted that the petitioner was called for interview on 29.11.2000 based upon the transfer effected in the employment exchange on the basis of the Residence Certificate, which we have upheld. But, before the petitioner was considered for appointment, the Residence Certificate issued by the Tahsildar has been cancelled. In view of our order, the second respondent namely, the Chief Educational Officer, Tiruvarur District is directed to consider the appointment of the petitioner as Secondary Grade Teacher taking into consideration of the certificate issued by the Tahsildar dated 14.6.99 and the change effected in the employment exchange registration card. The above exercise shall be completed by the second respondent within a period of two months from the date of receipt of copy of this order either from the Registry or from the petitioner.

12. With the above direction, the writ petition is allowed. No costs. Consequently, W.P.M.P.No.61267 of 2002 is closed.

Index: yes

Internet: yes

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To

1. The District Collector
Tiruvarur District, Tiruvarur

2. The Chief Educational Officer
Tiruvarur District

3. The Director of Elementary Education
College Road
Chennai 600 006

4. The Registrar
Tamil Nadu Administrative Tribunal
Chennai 600 104

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